IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7371 of 1998
to
FIRST APPEAL No 7382 of 1998
with
FIRST APPEAL NO. 227 OF 1999
to
FIRST APPEAL NO. 235 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

NEW INDIA ASSURANCE CO LTD

Versus

DEVABHAI SIDHABHAI BHARWAD

Appearance: FA NOS. 7371/98 TO 7382/98:
MR PV NANAVATI for Appellant
MR AV PRAJAPATI for Respondent No. 1 to 7
MR RAJNI H MEHTA for Respondent No. 8
FA NOS. 227/99 TO 235/99 :
MR PV NANAVATI For Appellant
RESPONDENT NOS. 1 TO 5 SERVED
NOTICE NOT RECEIVED BACK FOR RESP.NO.6
MR RAJNI H MEHTA for Respondent no. 7

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE C.K.BUCH

Date of decision: 11/03/99

COMMON JUDGEMENT [PER: R.K.ABICHANDANI, J]

These appeals, which are argued together, are directed against the orders made by the Tribunal under Sec.140 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act), raising a common contention before us on behalf of the appellant New India Assurance Company Ltd. that the appellant Insurance Company could not have been required to pay the interim amount of compensation on the basis of a wrong concession made by the learned counsel appearing for the appellant. It is contended that no concession could have been made by the advocate of the appellant Insurance Company in view of the fact that the driver of the truck was not having a licence and, therefore, a statutory defence was open for the appellant company under Sec.149(2)(b)(ii) of the Act.

In all these matters, the impugned orders were made on an application under Sec.140 of the Act and main petitions are still pending in the Tribunal.

In the impugned orders made in the First Appeals against interim compensation in death cases viz. FA Nos. 7371/98, 7372/98, 7373/98, 7374/98, 227/99, 228/99, 229/99, 230/99 and 233/99, compensation of Rs. 50,000/ together with interest at the rate of 12% p.a.from the date of application till the realisation of the amount from the original opponents concerned jointly and severally, was awarded. In the impugned orders made in the First Appeals against interim awards in injury cases viz. FA Nos. 7375/98, 7376/98, 7377/98, 7378/98, 7379/98, 7380/98, 7381/98, 7382/98, 231/99, 232/99, 234/99 and 235/99, compensation of Rs. 25,000/ together with interest at the rate of 12% p.a. from the date of application till the realisation of the amount from the original opponents concerned jointly and severally, was awarded.

The learned counsel appearing for the appellant has also given an application for taking additional evidence with a copy of the chargesheet in support of his contention that it would be seen from the chargesheet that the driver was charged, inter alia, for the offence of driving without a valid licence. It was submitted that since the learned advocate for the appellant was not having a copy of the chargesheet, he had wrongly made a concession before the Tribunal that it may pass an order of interim compensation under Sec.140 of the Act. The learned counsel argued that even in applications under Sec.140 of the Act, it was open for the Insurance Company to raise its defence and prima facie show that it would not be liable to make any payment for which an order is made against the owner under sec. 140 of the Act. He

placed heavy reliance on the decision of the Supreme Court in the case of Smt. Mallawwa etc. v/s The Oriental Insurance Co.Ltd. & Ors., reported in JT 1998(8) SC 217 in support of his contention that even while making the order in an application made under Sec.140 of the Act, the Tribunal can hold that the Insurance Company is not liable to make the payment. It was contended that since, prima facie, the driver was not having a licence, the Insurance Company was not liable under the contract of insurance. Reliance was placed in support of this contention on the decision of the Supreme Court in the case of New India Assurance Co. Ltd. v/s Mandar Madhav Tambe and others, reported in AIR 1996 SC 1150 in which it was held that when vehicle in question was driven by a person holding a learner's licence the Insurance Company would not be liable to pay the compensation to the victim particularly when the policy of insurance specifically provided that the insurance company, in the event of an accident, would be liable only if the vehicle was being driven by a person holding a valid driving licence or a permanent driving licence "other than a learner's licence". In that case, even the learner's licence had lapsed two years before the accident. It was contended that the Insurance Company's liability can arise only under the contract of insurance and, therefore, if no liability arises by virtue of the terms of the contract, and it is prima facie, shown that the statutory defences are available, no liability can be fastened on the Insurance Company under sec.140 of the Act. It was submitted that an admission on the question of law erroneously made by the advocate of the appellant before the Tribunal cannot bind the appellant.

In all these matters, admittedly, the learned advocate who appeared for the appellant before the Tribunal, had stated that the appellant Insurance Company had no objection if the interim amount of compensation was awarded. There cannot be a clearer statement than the one which has been recorded in the impugned order which goes to show that the appellant Insurance Company raised no objection at that stage and declared its intention that it had no objection if the interim amount of compensation was awarded. The impugned orders have been made on 11.11.1998 and 16.12.1998 respectively and all these matters arise out of the same accident. In all the impugned orders, a statement that the appellant Insurance Company has no objection against the award of interim compensation, has been recorded. This would clearly mean that at that stage, the appellant Insurance Company did not want to raise any statutory defence for disowning its liability even for the interim award. Apart from the question whether we should allow any

additional evidence in the nature of copy of the chargesheet which is placed on record in the application, it is clear that the chargesheet was prepared on 10.12.1997 which was much prior to the making of the impugned interim awards granting interim compensation in these cases. It is difficult to believe that the Insurance Company would not know of a chargesheet filed nearly a year before the date on which the statement was made before the Tribunal or that it could not have obtained a copy of the chargesheet with due diligence. There is, therefore, no warrant for allowing any additional evidence at this stage. Even apart from that, when we look at the chargesheet, we find that there is only an accusation that the driver was driving without a valid licence. Admittedly, no such defence is put up in the reply which is filed to the claim petition. When no defence is taken up at all, as stated by the learned advocate for the appellant, that the driver did not have a licence, it would be too much to expect the Tribunal to make any other order by imagining statutory defence which is not taken up. As observed by the Supreme Court in the context of a provision similar to sec.140 of the Act in the case of Shivaji Dayanu Patil and another v/s Vatschala Uttam More, reported in 1991 ACJ 777, the provision of sec. 92A of the Act of 1939 was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose.The Supreme Court, while holding so, referred to its earlier decision in Motor Owners' Insurance Co. Ltd. v/s Jadavji Keshavji Modi, reported in 1981 ACJ 507 (SC) and Skandia Insurance Co. Ltd. v/s Kokilaben Chandravadan, reported in 1987 ACJ 411 (SC). It was also held that the object underlying the provision would be defeated if the Claims Tribunal is required to hold a regular trial in the same manner with regard to adjudication of claims under Sec.110-A of the Act. Our esteemed Brother Hon'ble Mr. Justice JM Panchal has expressed himself in the same vein in New India Assurance Co. Ltd. Ahmedabad v/s Mithakhan Dinakhan Notiyar & Ors., reported in 36(2) GLR 1111 while holding in the context of the provisions of Sec.140 of the Act that the said provision is beneficial and social welfare piece of legislation and should be construed in a manner that would fulfil the policy underlying the provision. It was

observed that while making an order under Sec.140 of the Act, the Tribunal is not required to follow the procedure contained in Rules 211 to 230 and 232 of the Gujarat Motor Vehicles Rules, 1989. His Lordship held that the objects for which sec.140 of the Act is enacted, would be defeated if the Claims Tribunal is required to hold regular trial in the same manner as for adjudicating a claim made in a petition filed under Sec.168 of the Act. The Tribunal would be entitled to make award under Sec.140 of the Act as soon as it comes to the conclusion that the owner of the vehicle was involved and insured. The observations made in New India Assurance Co. Ltd. (Supra) are completely in tune with the decision of the Supreme Court in the case of Shivaji Dayanu's case (supra) and we do not find any distinguishing feature to take any different view of the matter.When it was not the defence admittedly taken up in the reply filed in the claim petition before the Tribunal that the driver was not having a licence, there was no question of waiting for any further procedure of framing of issues and giving a finding thereon, and, the Tribunal was fully justified while awarding interim compensation to the claimants to be paid jointly and severally by the concerned respondents. Even if the chargesheet was produced, but no defence was taken up of the nature which is now hinted before us, the Tribunal would have been justified in making the impugned orders. Whether a person was having a licence or not was a question of fact, and as held by the Supreme Court in the case of Narcinva V.Kamat and another v/s Alfredo Antonio Doe Martins and others, reported in 1985 ACJ 397, burden to prove that there was a breach of contract of insurance was squarely placed on the shoulders of the Insurance Company. It is for the Insurance Company to adduce evidence to substantiate its allegation that the driver was not having a licence. In the present case, as stated by the learned counsel for the appellant Insurance Company, no such defence was raised in the reply which was filed to the claim petition. It is stated that even by now no such defence is raised. In this background, we hold that the impugned orders were validly made qua the appellant Insurance Company whose advocate had categorically stated that the appellant has no objection if the impugned order of compensation is made. In this view of the matter, the decision of the Supreme Court in Mallawwa's case (supra) cannot assist the appellant. In that case, admittedly on facts, the deceased was travelling in a goods vehicle and since that was against the contract of insurance, the company was held not to be liable. In the present case, as noted above, there was no statutory defence of want of licence taken up and the appellant company is, in our

view, rightly held to be liable to pay the interim compensation jointly and severally with other concerned opponents.

All these appeals are, therefore, summarily dismissed with no orders as to costs.

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